

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

DONNA M. HARCUS,

Plaintiff,

Case No. 19-cv-1449-pp

v.

COMMISSIONER OF THE
SOCIAL SECURITY ADMINISTRATION,

Defendant.

**ORDER GRANTING PLAINTIFF'S AMENDED MOTION FOR LEAVE TO
PROCEED WITHOUT PREPAYING THE FILING FEE (DKT. NO. 5)**

The plaintiff has filed a complaint seeking judicial review of a final administrative decision denying her claim for disability insurance benefits under the Social Security Act. Dkt. No. 1. She also filed a motion for leave to proceed without prepaying the filing fee. Dkt. No. 3. On October 16, 2019, the court ordered the plaintiff to file an amended motion for leave to proceed without prepaying the filing fee, dkt. no. 4, and the plaintiff filed that amended motion, dkt. no. 5.

To allow the plaintiff to proceed without paying the filing fee, the court first must decide whether the plaintiff can pay the fee; if not, it must determine whether the lawsuit is frivolous. 28 U.S.C. §§1915(a) and 1915(e)(2)(B)(i).

Based on the facts in the plaintiff's affidavit, the court concludes that she does not have the ability to pay the filing fee. The plaintiff's affidavit indicates that she is not employed, not married, and she has no dependents she is

responsible for supporting. Dkt. No. 5 at 1. The only income the plaintiff lists is \$194 per month for “food assistance,” id. at 2, and her only expenses are “other household expenses of \$194 for food, id. at 2-3. The plaintiff does not own a home, a car, or any other property of value, and she has no cash on hand or in a checking/savings account. Id. at 3-4. The plaintiff states, “I live with my daughter for free, otherwise I would be homeless, living in a homeless shelter, as I was a few years ago. I use food assistance for my food, but I live rent free and am allowed to share in use of toiletries and soaps for free.” Id. at 4. The plaintiff has demonstrated that she cannot pay the \$350 filing fee and \$50 administrative fee.

The next step is to determine whether the case is frivolous. A case is frivolous if there is no arguable basis for relief either in law or in fact. Denton v. Hernandez, 504 U.S. 25, 31 (1992) (quoting Nietzke v. Williams, 490 U.S. 319, 325 (1989); Casteel v. Pieschek, 3 F.3d 1050, 1056 (7th Cir. 1993)). A person may obtain district court review of a final decision of the Commissioner of Social Security. 42 U.S.C. §405(g). The district court must uphold the Commissioner’s final decision as long as the Commissioner used the correct legal standards and the decision is supported by substantial evidence. See Roddy v. Astrue, 705 F.3d 631, 636 (7th Cir. 2013).

The plaintiff has filed this district’s form complaint, which states that she was denied benefits by the Commissioner, that she was disabled during the time period included in this case, and that the Commissioner’s unfavorable conclusions and findings of fact in the denial of benefits are not supported by

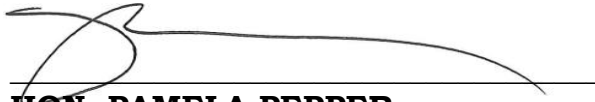
substantial evidence and/or are contrary to law and regulation. Dkt. No. 1 at 3. At this early stage in the case, and based on the information in the plaintiff's complaint, the court concludes that there may be a basis in law or in fact for the plaintiff's appeal of the Commissioner's decision, and that the appeal may have merit, as defined by 28 U.S.C. §1915(e)(2)(B)(i).

The court **GRANTS** the plaintiff's amended motion for leave to proceed without prepaying the filing fee. Dkt. No. 5.

The court **DENIES as moot** the plaintiff's original motion for leave to proceed without prepaying the filing fee. Dkt. No. 3.

Dated in Milwaukee, Wisconsin this 28th day of October, 2019.

BY THE COURT:



HON. PAMELA PEPPER
United States District Judge